IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 32 OF 2006.
IN
NOTICE OF MOTION NO. 3530 OF 2000
IN
APPEAL NO. 1065 OF 2000
IN
SUIT NO. 1294 OF 1986

1. Kishore Narsingh @ Hiralal Shah,
residing at 11, Ganesh Bhuvan,
Senapati Bapat Marg, Opp: Mahim
Railway Station, Mahim,
Mumbai 400 016.

2. Smt.Aruna Rajan Pancholi,
residing at Hate Bungalow,
Ground floor, Gandhi Gram Road,
Juhu, Mumbai 400 054.

3.A. Ms.Poonam A. Moitra,
B-54, Shravasti Apartments,
Near Inorbit Mall,
Off: Goregaon Malad Link Road,
Malad (West), Mumbai 400 064. ... Petitioners
(Org.Respondents)

Versus.

1. Prakash Narsingh Shah,
"Narsingh Bhuvan", 2nd floor,
4th Road, Khar, Mumbai 400 052.

2. Mrs.Ulhas Nihalchand Shah,
Chira Bazar, Mumbai 400 003.

3. Mrs.Manjula Umedmal Shah,
Nul Bazar, Near Round Temple,
Mumbai 400 003.

4. Mrs.Aruna Hasmukh Jain,
Gyaneshwar Building, 6th floor,
Aarey Road, Goregaon, Mumbai ... Contemnors.
400 063. (Respondents Nos.1 to 4-
original Appellants)

5. G.M.Developers, a partnership
firm registered under the
Indian Partnership Act, 1932
carrying on business at 9,
Street Yard House, Iron Market, ... Contemnor

Mumbai 400 009. (Respondents.)

Shri N.Engineer with Shri N.C.Parekh i/by M/s.Mansukhlal Hiralal & Co. for the Petitioners.

Shri A.Y.Sakhare, Senior Counsel with Shri Bharat Vaishnava for the Respondents Nos.1 to 4.

Shri P.K.Samdhani with Ms.Kavita Shah for Respondent No.5.

CORAM : ABHAY S.OKA, J.

DATED : 29th August, 2007.

ORAL JUJDGMENT.:

1. Heard the learned Counsel for the parties. Order dated 28th July 2006 passed by this Court records that the Court was prima-facie satisfied that the Respondents have committed contempt of the order dated 6th August 2001 and therefore, contempt petition was being admitted. This Court issued notice to the Respondents calling upon them to show cause as to why action should not be taken for having committed contempt of this Court's order dated 6th August 2001.

2. The Petitioners are the original Plaintiffs in the suit No.1294 of 1986. The first four Respondents are the Defendants to the said suit. The breach alleged in this contempt petition is of the order dated 6th August 2001 passed by a Division Bench of this Court in a Notice of Motion in Appeal No.1065 of 2000. By the said order the Division Bench of this Court directed

that the injunction which was operating during the pendency of the suit in respect of the property No.2 described in the plaint will continue to operate during the pendency of the said Appeal. The injunction referred to in the order of the Division Bench is an order which was made by the learned Single Judge of this Court on 10th September 1986 in a Notice of Motion taken out in the suit filed by the Petitioners. By the said order, the Defendants in the suit were restrained by an injunction from disposing of the property mentioned in Item No.2 described in the plaint. Item No.2 described in the plaint reads thus:

> (ii) Business run in the name and style of "Stylish Company" near Khar Railway Station, Khar, Bombay.

3. The learned Counsel appearing for the Petitioners has invited my attention to the various averments made in the petition. He has also invited my attention to the averments made in the affidavit filed by the Respondents. His submission is that the parties to the suit have all along understood the order of temporary injunction granted on 12th September 1986 to mean that the injunction was in respect of the shop premises in which the business in the name and style of Stylish Company was carried on. His second submission

is that Stylish Company was the business owned by Narsingh D.Shah HUF and there are documents on which reliance is placed by the concerned Respondents which show that even the said business was transferred in favour of a different HUF of which the 1st Respondent claims to be a Karta.

3. The learned Counsel invited my attention to the letter of December 1989 sent by the 1st Respondent to the 4th Respondent, the landlord of the building Balkrishna Niwas in which Shop Nos.4, 5, 6 and 7 were situated and in which the business of M/s.Stylish Company was being carried out. He also invited my attention to the consent terms filed in the suit filed by the landlords of the building Balkrishna Niwas against the 1st to 4th Respondents. He pointed out that clause 1 of the consent terms clearly shows that there is a transfer of business of M/s.Stylish Company in favour of a HUF of which the 1st Respondent is the Karta. He therefore submitted that it is virtually an admitted position that there is a transfer of business which is clearly in breach of the order of injunction passed by this Court. He also invited my attention to the reply filed by the 1st Respondent on behalf of the 1st to 4th Respondents for pointing out that the parties all along understood that the order of temporary injunction granted by this Court relates to the shop

premises in which the business was being carried out. He also placed reliance on the deed of rectification dated 2nd February 2006 executed by the 5th Respondent. He also relied upon the agreement dated 9th December 2005 executed by the 5th Respondent in favour of the HUF in name of the 1st Respondent. On the basis of this documents, he submitted that it is clearly established that there is a transfer of business in favour of the HUF of which the 1st Respondent claims to be the Karta. He also pointed out that the 1st to 4th Respondents have surrendered their tenancy in respect of the business premises. He pointed out that as per the aforesaid documents the premises on ownership basis will be allotted to the 1st to the 4trh Respondents. He also placed reliance on a decision of the Division Bench of this Court in the case of Gopal L.Raheja & another v/s. Vijay B.Raheja and others (2007(1) Bom.C.R. 244). He submitted that the documents which are referred to above clearly show that the 5th Respondent was aware of the order of injunction passed by this Court. He, therefore, submitted that the 5th Respondent should be punished for aiding and abetting the breach of the order of this Court by the 1st to 4th Respondents. He submitted that the documents which are relied upon by the 1st to 5th Respondents show that there is a breach on the part of the said Respondents of the order passed by this Court. I have also heard the learned Counsel

appearing for the Respondents.

4. I have carefully considered the submissions. It will be necessary to refer to the averments made in the contempt petition. The material averments on which reliance is placed are found in paragraph 10 onwards. Paragraphs 10 to 13 read thus:

> "10. The Petitioners further say and submit that in or about February 2006, the Petitioners have noticed that the properties setout in item No.2 of Exh.A to the plaint has been vacated by the Respondents Nos.1 to 4 and the building thereof was being demolished. The Petitioners has, therefore, made enquiries and found that the property is being developed by the Respondent No.5.
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> 11. The Petitioners, therefore, called upon the Respondents Nos.1 to 4 and apprised them of the order dated 6th August 2001, in the Notice of Motion, inter-alia, injuncting them from parting with possession of the said shop premises set out in item 2 of Exh.A to the plaint.
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> 12. On further enquiries, the Petitioners

> also found that the 4 shops set out in item 2 of Exh.A to the plaint, the suit property is being developed by the Respondent No.5. The Petitioners also apprised of the Respondent No.5, about the said order dated 6th August, 2001 in the Notice of Motion, inter-alia, injuncting the Respondents Nos.1 to 4 from parting with possession of the said shop premises set out in item 2 of Exh.A to the plaint and called upon the Respondent No.5 not to take possession thereof, in view of the injunction passed by the Hon'ble High Court in the said Notice of Motion,.
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> 13. However, to the surprise of the Petitioners, it appears that the Respondents Nos.1 to 4, had parted with the possession of the said 4 shops, set out in item 2 of the Exh.A to the plaint, in flagrant breach of the injunction order dated 6th August, 2001."

It is not in dispute that the property described in item 2 of the plaint which is referred to in the order of temporary injunction passed by this Court is the business run in the name and style of M/s.Stylish Company, near Khar Railway Station, Khar, Mumbai. It is not the case made out in the contempt petition that the

order of injunction relates not only to the business but also to the premises in which the business was being carried out. The order of injunction relates to the business and not to the business premises. There is no specific allegation made in the petition that the business of M/s.Stylish Company which was allegedly being carried out by Narsingh alias Hiralal Dhanrup Shah HUF has been transferred to Prakash Narsingh Shah HUF of which the 1st Respondent is the Karta. The first allegation in the contempt petition is that the building in which the shop premises were situated has been demolished and the property is being developed by the 5th Respondent. The second allegation is that the 1st to 4th Respondents had parted with possession of the portion of the shop in which the business was allegedly carried out. These are the only two material allegations in the contempt petition on the basis of which the Notice has been issued to the Respondents. The order passed by this Court on 28th July 2007 does not record that the notice has been issued on the basis of the documents which are referred to by the learned Counsel appearing for the Petitioner. The documents which are relied upon by the Counsel for the Petitioenr viz. the consent terms, agreement dated 9th December 2005, the deed of rectification dated 2nd February 2006 etc. are not referred to and relied upon in the petition.

5. The prayer in this petition is that the contemnors should be imprisoned by exercising powers under the Contempt of Court Act, 1971.

6. It cannot be disputed that the proceedings under the Contempt of Court Act, 1971 and under Article 215 of the Constitution of India are in the nature of quasi-criminal proceedings. The show cause notice which was issued by this Court was on the basis of the averments made in paragraphs 10 to 13 of the petition. As stated earlier the first allegation is that the shop premises in which the business was being carried out was demolished and the second allegation is that the possession of the shop premises has been transferred.

7. It is not the case of the Petitioners in this petition that the injunction relates to the premises in which business was being carried on or that the parties understood and accepted that the order of injunction was also in respect of the business premises. The submissions which are made by the learned Counsel appearing for the Petitioners are that there is a transfer of business in favour of the HUF in the name of the 1st Respondent and that there is surrender of tenancy by the 1st to 4th Respondents. These are not the averments or allegations made in the petition on the

basis of which show cause notice has been issued. Assuming that what the learned Counsel for the Petitioners has argued is correct, the Respondents cannot be punished on the basis of such allegations for which there is no foundation in the contempt petition. Suffice it to say that the averments made in this petition do not make out a case of breach of order of injunction by the Respondents.

8. In view of this position, it is not necessary to consider the question whether the documents on which reliance is placed by the Counsel for the Petitioners show the transfer of business or the premises. The said submission made by the learned Counsel for the Petitioner are not on the basis of the averments in the petition but are based on averments in the reply and documents referred to by the Respondents. The said contentions cannot be dealt with while deciding of the show cause notice issued by this Court on the basis of the averments in this petition and the said contentions will have to be decided in appropriate proceedings. It is obvious that all the contention of the contesting parties in that behalf are kept open as this Court has not dealt with these contentions on merits. Turning back to the averments made in the petition, as indicated earlier, no case is made out for penalising the Respondents on the basis of the alleged breach as

specifically alleged in the contempt petition.

9. Subject to what is observed earlier, the notice issued to the Respondents is discharged. The petition is disposed of. There will be no order as to costs.

Judge.